



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/157810

PRELIMINARY RECITALS

Pursuant to a petition filed May 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on July 22, 2014, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's application for Medicaid was correctly denied due to ownership of assets in excess of Medicaid asset limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Sandy [REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Miller

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. An application for institutional Medicaid was filed by or on behalf of Petitioner on or about February 24, 2014.
3. Ultimately Petitioner's application for institutional Medicaid was denied because of assets in excess of Medicaid asset limits. The assets counted against the asset limit included a resident account at [REDACTED], the nursing home in which Petitioner was residing. That account had a balance of \$1700 at the time of application. Another asset was a checking account that had a balance of slightly more than \$1900.00; \$1236 of which was a Social Security deposit on

February 1, 2014. Petitioner also had a \$5.00 deposit at a credit union. As this totaled more than \$2000.00 the agency denied Petitioner's institutional Medicaid application.

4. The resident account at [REDACTED] was set up by Petitioner's family so that Petitioner would have funds available to have her hair done and to afford various sundries at the nursing home. Petitioner passed away on March 14, 2014.
5. When Petitioner passed the balance of the resident account at [REDACTED] had a balance of \$1680. That balance was used by the nursing home to offset Petitioner's balance due to [REDACTED] of about \$17,100.00.

DISCUSSION

The asset limit for a medically needy elderly, blind or disabled group of one is \$2000.00. *Medicaid Eligibility Handbook, (MEH), §39.4.1*. There are no exceptions to this asset limit though in some circumstances an asset can be considered to be unavailable. Those are as follows:

16.2.1 Assets Availability Introduction

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if:

1. The member lacks the ability to provide legal access to the assets, and
 2. No one else can access the assets, and
 3. A process has been started to get legal access to the assets.
- or

When the owner or owner's representative documents that the asset will not be available for 30 days or more.

...

MEH, §16.2.1.

Also relevant here is the rule that income received in a month is not counted as an asset until the following month. *MEH, §16.1.*

The circumstances here do not demonstrate unavailability. The assets as of the time of application were the \$1700 resident account, the \$5.00 savings account and the checking account with a balance of about \$660.00 in countable assets (~\$1900 less the February Social Security check of \$1236, income not an asset in month of receipt). As this is more than \$2,000.00, the agency correctly denied the institutional Medicaid application.

I also note that the Division of Hearings and Appeals that the Division does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977)*. The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. It cannot ignore or adjust the asset limit. I have to conclude that Petitioner's application was correctly denied because Petitioner's assets exceeded the program asset limit.

CONCLUSIONS OF LAW

That Petitioner's application for Medicaid eligibility was correctly denied due to ownership of assets in excess of the program limit at the time of application.

Now therefore, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of August, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 19, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability